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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91176744
Party	Plaintiff DC Comics and Marvel Characters, Inc.
Correspondence Address	Jonathan D. Reichman Kenyon & Kenyon, LLP One Broadway New York, NY 10004 UNITED STATES
Submission	Motion to Extend
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Signature	/Michelle Morris/
Date	10/10/2008
Attachments	2008-10-10_DC-MAR_Motion_for_Extension_of_Time.pdf ( 7 pages )(455920 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

DC COMICS and  
MARVEL CHARACTERS, INC.,

Opposers,

v.

MICHAEL CRAIG SILVER,

Applicant.

Opposition No. 91/176,744  
Application No. 78/823,155  
Mark: SUPER HERO

**OPPOSER'S MOTION FOR AN EXTENSION OF TIME**

Pursuant to Trademark Board Manual of Procedure § 509.01, 37 CFR § 2.116(a), and Federal Rule of Civil Procedure 6(b)(1), Opposers DC Comics and Marvel Characters, Inc. (collectively, "Opposer") seek an order from the Trademark Trial and Appeal Board ("the Board") extending the opening of Opposer's testimony period by sixty (60) days to allow Opposer time to review the discovery material produced by Applicant Michael Craig Silver ("Applicant") on October 3 and 4; to determine whether Applicant's responses are complete pursuant to the requirements of the Board's September 4, 2008 Order (the "Order") granting Opposer's Motion to Compel Discovery Responses; and to adequately prepare for taking testimony.

**BACKGROUND**

On July 3, 2008, Opposer filed its Motion to Compel Discovery Responses due to Applicant's failure to provide any meaningful discovery responses or material.

On September 4, 2008, Opposer's Motion to Compel Discovery Responses was granted in full by the Board, and Applicant was ordered to serve its responses and documents within thirty (30) days of the date of the Order. Applicant was further ordered to ". . . notify opposers that the selection, designation and identification of such documents has been completed."

On October 2, 2008, Applicant served "Applicant's Ammended / Supplemental Responses to Interrogatory Nos. 1-27" and "Applicant's Ammended / Supplemental Responses to Opposer's Document Request Nos. 1-14 and 35," which included documents labeled under the headings "Figure 1" and "Figure 2."

The next day, on October 3, 2008, Applicant served an additional set of documents entitled, "Applicant's Ammended Figure 2."

On October 06, 2008, Opposer's counsel spoke by telephone with Applicant, and requested a 60 day extension of the opening of Opposer's testimony period, so that Opposer's counsel could review with Opposer the material provided by Applicant, and prepare for testimony. Applicant said that he would consider the proposal, and promised to repsond to Opposer by the end of the following day. However he never did.

On October 08, 2008, Opposer sent Applicant an e-mail following up on the October 6 conversation, asking Applicant to confirm whether the responsive documents provided by Applicant represented Applicant's complete responses, as required by the Order. Opposer's email of October 8, 2008 is attached here to as Exhibit 1.

As of today, Applicant has not met its obligation to confirm that its document responses are complete, and Opposer has not received a response from Applicant regarding its request to extend the opening of Opposer's testimony period.

## **ARGUMENT IN SUPPORT OF EXTENSION OF THE OPENING OF OPPOSER'S TESTIMONY PERIOD**

Pursuant to Fed. R. Civ. P. 6(b) and 37 CFR § 2.116(a), a party may file a motion for an enlargement of time. If the motion is filed prior to the expiration of the relevant period, the moving party need only show good cause for the requested extension.

Opposer seeks a sixty (60) day enlargement of time before the opening of its testimony period and the subsequent resetting of all trial dates. Opposer's request is based upon good cause. *See Sunkist Growers, Inc. v. Benjamin Ansehl Company*, 229 USPQ 147, 150 (TTAB 1985) (opposer's motion to compel having been granted, it was reasonable to allow additional time for opposer to take discovery before proceeding with testimony).

Similar to *Sunkist Growers*, Opposer's sixty (60) day extension request is reasonable, as it will enable Opposer's counsel to confirm the necessary information from Applicant; meaningfully review Applicant's late-supplied material; liaise with Opposer and potential testimony deponents; and therefore adequately prepare for Opposer's testimony period.

It is as a result of Applicant's failure to provide adequate and timely discovery responses Opposer was forced to bring a Motion to Compel, which was granted in full by the Board. Opposer requires this additional time because Applicant has failed to confirm that the discovery documents supplied to date represent Applicant's complete responses, as required by the Order. At this point, Opposer has no idea if Applicant is withholding additional responsive documents. Opposer needs this additional time to establish whether its discovery needs have been satisfied; take any necessary steps if they have not; and then switch gears and focus on its testimony.


This requested extension is not for undue delay, and will not burden or prejudice the Applicant. In fact, the request is instead a result of Applicant's delay. Consequently, Opposer has demonstrated good cause for its need for this extension.

### CONCLUSION

For the reasons hereinabove set forth, Opposer respectfully requests that the Board grant Opposer's Motion for an Extension of Time, and extend the opening of Opposer's testimony period by sixty (60) days and reset all subsequent trial dates in accordance.

KENYON & KENYON LLP

Dated: October 10, 2008

By:   
Jonathan D. Reichman  
Michelle C. Morris  
One Broadway  
New York, New York 10004  
(212) 425-7200  
*Attorneys for Opposer*

## PROOF OF SERVICE

I hereby certify that true and complete copy of OPPOSER'S MOTION FOR AN  
EXTENSION OF TIME has been served by mailing said copy on October 10, 2008, via first  
class mail, to:

Michael Craig Silver  
3229 Steiner Street  
San Francisco, California 94123

A handwritten signature in cursive script, reading "Michelle C. Morris". The signature is written in dark ink and is positioned above a horizontal line.

Michelle C. Morris

# EXHIBIT 1

**Morris, Michelle**

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**From:** Morris, Michelle  
**Sent:** Wednesday, October 08, 2008 3:46 PM  
**To:** silver\_michael@sbcglobal.net  
**Cc:** Reichman, Jonathan  
**Subject:** Super Hero Opposition

Dear Michael,

I write in follow up to your conversation of Monday, October 6 with Jon Reichman. Please advise if you will consent to the discussed 60 day extension of the opening of Opposer's testimony period so that we may have the opportunity to fully review and consider your responses, discuss them with our clients, prepare for the testimony period, and also consider whether we wish to further pursue settlement discussions.

Also please confirm whether the responses and documents that you have provided to date represent your complete responses, or if there are any documents that are being withheld for any reason. This confirmation was required by the Board in its September 4, 2008 Order. Thank you.

Best regards,

Michelle C. Morris | Associate  
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10/10/2008